80-1159

No. A-323

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In the Supreme Court of the United States

October Term, 1980

ELVA J. HAUGEN,
Petitioner,

vs.

GLEN C. TAYLOR, HELEN C. CANNON, C. DONALD BROWN, JAMES C. ANDRUS, JOHN F. ANDERSON, CLARE W. WOODBURY, and DAVID CANTER, INDIVIDUALLY and as members of the BOARD OF SCHOOL TRUSTEES of the CLARK COUNTY SCHOOL DISTRICT; and KENNY C. GUINN, INDIVIDUALLY and as SUPERINTENDENT of the CLARK COUNTY SCHOOL DISTRICT; RICHARD F. BROWN, Associate Superintendent, Personnel Division; CHARLES SILVESTRE, Assistant Personnel Manager; JOHN T. PAUL, Associate Superintendent; THERON SWAINSTON, Assistant Superintendent, Elementary Education; CECIL R. JACKSON, Principal E. W. Griffith Elementary School; and KENNETH MARSHALL, Principal, Lois Craig Elementary School, INDIVIDUALLY and as employees of CLARK COUNTY SCHOOL DISTRICT; DWAINE AVERY, JOSEPHINE C. BYRD, GERALD CONNERS, DON L. ESTES, and JOHN D. HARRINGTON, INDIVIDUALLY and as members of the PROFESSIONAL REVIEW PANEL and employees of the CLARK COUNTY SCHOOL DISTRICT,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR RESPONDENTS

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QUESTION PRESENTED

The only question presented on this Petition for Certiorari is which statute of limitations applies in Nevada for the purposes of barring a claim brought under 42 U.S.C. §§1983 and 1985.

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BRIEF FOR RESPONDENTS

OPINION BELOW

There has been no opinion rendered by the Court of Appeals for the Ninth Circuit or by the United States District Court for the District of Nevada. Petitioner's Complaint was dismissed below with prejudice in the United States District Court for the District of Nevada, CV-LV-75-180, RDF, on June 26, 1978. On appeal to the United States Court of Appeals for the 9th Circuit, the Court issued a memorandum decision affirming the judgment of the court below, No. 78-3526, on July 21, 1980.

JURISDICTIONAL STATEMENT

The judgment of the Court of Appeals for the Ninth Circuit, Number 78-3526, was filed and entered on July 21, 1980. A Petition for Rehearing and Suggestion for Rehearing En Banc was denied on September 23, 1980. A Petition for Writ of Certiorari was filed through the mails by Petitioner and received by Respondents on January 6, 1981. The jurisdiction of this Court rests on 28 U.S.C. §1254(1).

CONSTUTUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

The constitutional provisions, statutes and regulations which are relevant to the determination of this case are as follows: 42 U.S.C. §1983; 42 U.S.C. §1985; Nevada Revised Statutes (As amended 1965, 1967; Reissue: 1979) §§11.190 (1) (b); 11.190 (3) (a).

STATEMENT OF THE CASE

Plaintiff-petitioner brought a suit under 42 U.S.C. §1983 and 42 U.S.C. §1985 in the United States District Court, District of Nevada, alleging a violation of her civil rights and the existence of a conspiracy regarding her termination as a school teacher by the Clark County School District. Defendants-respondents are members of the Board of School Trustees of the Clark County School District and various administrative personnel in the Clark County School District whom Plaintiff-petitioner alleges took part in the proceedings by which she was dismissed from her position.

In its Order of June 26, 1978, the United States District Court for the District of Nevada approved the report of the United States Magistrate and the orders related thereto and dismissed the Plaintiff's Complaint with prejudice. CV-LV-75-180, RDF. The report of the United States Magistrate, a copy of which is provided on page D of the Appendix in the Petition for Certiorari, specified that Plaintiff filed her Complaint on October 7, 1975 and alleged that Defendants conspired to violate her civil rights by conspiring to cause her dismissal from the Clark County School District. The action was brought pursuant to 42 U.S.C. §§1983 and 1985. Defendants filed Motions to Dismiss on the grounds that Plaintiff's Complaint was untimely and that it failed to allege facts to support a cause of action. The conduct complained of took place on January 31, February 1, April 20, and April 26 of 1972. The report then stated that the three-year statute of limitations was applicable to that action and had neither been tolled nor extended and had expired prior to the commencement of the Plaintiff's action. The Magistrate concluded that the Plaintiff's cause of action was forever barred because of the fact that the statute of limitations had run.

On appeal to the United States Court of Appeals, Ninth Circuit, No. 78-3526, the Court affirmed the judgment of the United States District Court in their memorandum decision and held that the Plaintiff's civil rights action, brought pursuant to 42 U.S.C. §§1983 and 1985, was barred by the State of Nevada's three-year statute of limitations.

The only facts relevant to the disposition of this matter are as follows: As of January 7, 1972, Petitioner was notified that she was suspended without pay. On January 31 and February 1, 1972, hearings were held before the professional review panel of the Clark County School District. This board supported the recommendations for dismissal of Petitioner from her position in the school district. After another hearing on April 20, 1972, Petitioner received the official decision of the Clark County School District on April 26, 1972 when Glen C. Taylor, president of the Board of Trustees, informed Petitioner's attorney by registered mail that Petitioner had been officially dismissed as a teacher in the Clark County School District. It is undisputed that the Petitioner did not file her Complaint in Federal District Court until October 7, 1975, more than three years after the alleged improper conduct.

ARGUMENT

I. The Petition for Certiorari Should Be Denied Because Petitioner Has Failed to Comply, Both Procedurally and Substantively, With the Rules of the Supreme Court of the United States.

Upon examination of the Petitioner's Brief, it becomes obvious that several defects exist which provide ample justification for this Court to deny the Petition. The grounds for denial are not only based upon the statute of

limitations issue, but also upon the basic grounds for obtaining a writ of certiorari as contained in the Supreme Court Rules.

Under Supreme Court Rule 17, "a review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." The rule then enumerates various reasons for conducting a review of a lower court decision:

". . .

> (b) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision."

It is quite obvious that Petitioner's case does not fit into any of the categories enumerated in Rule 17 (1) (b). The United States Court of Appeals for the Ninth Circuit has already rendered a decision on the issues presented in this case in *Mason v. Schaub,* 564 F.2d 308 (9th Cir. 1977), wherein it was held that the three-year statute of limitations is applicable to actions brought under 42 U.S.C. §1983 in the State of Nevada. No other court of appeals had rendered a decision in conflict with that of *Mason v. Schaub,*

supra, relating to the applicable period of limitation in Nevada. Nor did the Ninth Circuit decide an important state or territorial question in conflict with applicable state or territorial law. Nor has the Court of Appeals decided an important question of federal law which has not been decided by the United States Supreme Court. It has universally been held that since Congress did not provide a statute of limitations governing actions brought under 42 U.S.C. §1983, federal courts would look to the state statute of limitations applicable to the most analogous state action. See, e.g., *Spiegel v. School District Number 1, Laramie County, Wyoming,* 600 F.2d 264 (10th Cir. 1979); *Carmicle v. Weddle,* 555 F.2d 554 (6th Cir. 1977). The Ninth Circuit has not decided a federal question in a way in conflict with the applicable decisions of this Court and has not so far departed from accepted and the usual course of proceedings as to call for an exercise of this Court's power of supervision as is demonstrated by the decisions of other circuits set forth below.

Many other procedural defects under Supreme Court Rule 21 exist in the Petition for Certiorari, but the most glaring infirmity in Petitioner's Brief is her flagrant violation of Paragraph 4 of Supreme Court Rule 21 which provides:

> "The failure of a Petitioner to present with accuracy, brevity and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his Petition."

Petitioner has chosen to include a great deal of irrelevant matter in her Petition and has likewise failed to present a clear picture of the legal issues involved. Petitioner has included arguments in her Brief which were not decided

upon in the Ninth Circuit or in the United States District Court for the District of Nevada. For the reasons stated above, Respondents contend that Petitioner's Brief is substantially deficient under the Rules of the Supreme Court of the United States and such Petition should therefore be denied.

II. The Three Year Statute of Limitations in Nevada, N.R.S. 11.190 (3)(a), Limiting Actions Upon Liabilities Created by Statute, Is Applicable to Actions Brought Pursuant to 42 U.S.C. §§1983 and 1985.

Petitioner claims that the six-year statute of limitations, N.R.S. 11.190 (1)(b), which governs actions upon a contract, obligation or liability founded upon an instrument in writing, applies to her action brought pursuant to 42 U.S.C. §§1983 and 1985 and that therefore, she is not barred from bringing those claims. Petitioner's position is clearly erroneous and contrary to existing case law. N.R.S. 11.190 (3)(a) and N.R.S. 11.190 (1)(b) provide:

"1. Within 6 years:

* * *

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

* * *

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture."

Directly on point is *Mason v. Schaub,* 564 F.2d 308 (9th Cir. 1977). Mason brought an action under 42 U.S.C.

§1983 which was dismissed by the United States District Court for the District of Nevada because it was barred by the Nevada statute of limitations. Mason alleged that the Defendants had arrested him without a warrant or probable cause, failed to take him before a magistrate, filed charges without cause and for unwarranted delay. He further alleged that other civilian defendants assisted, instigated and directed the arrest. These actions form the basis for Mason's claim that he was denied his constitutional rights in violation of the Civil Rights Act.

Mason filed his complaint two years and one day after the alleged incident. In its Per Curiam opinion, the United States Court of Appeals for the Ninth Circuit stated:

> "Title 42, Civil Rights Act, contains no statute of limitations. The Federal Courts look to the state where the incident occurred for the appropriate statute of limitations. *Strung v. Anderson,* 452 F.2d 632 (9th Cir. 1971); *Mulligan v. Schlachter,* 389 F.2d 231 (6th Cir. 1968); *Smith v. Cremins,* 308 F.2d 187 (9th Cir. 1962);
>
> In *Smith v. Cremins, supra,* we found that Cal. Civ. Proc. Code §338(1), which established a limitations period of three years for actions based upon a liability created by statute, was applicable to actions brought under the Civil Rights Act:
>
> > '§1983 of the Civil Rights Act clearly creates rights and imposes obligations different from any which would exist at common law in the absence of statute.'
>
> 309 F.2d at 190, we apply the longer remedial statute even though a common law action on the same circumstances might be possible. In Montana, which utilized the same language in its limitation statute

as does California, the period established in cases based 'upon a liability created by statute' was again deemed controlling. *Strung v. Anderson,* 452 F.2d at 632; *Shouse v. Pierce County,* 559 F.2d 1142 (9th Cir. 1977).

Nevada utilizes the same language in its statutes as does California. (Footnote omitted). The Nevada Supreme Court has acknowledged that the Nevada statutes were taken from the California code. *Hartford Insurance Group v. Statewide Appliances, Inc.,* 87 Nev. 195, 484 P.2d 569 (1971).

Because 42 U.S.C. §1983 creates a statutory liability, we hold that the three-year limitation of action provided under N.R.S. 11.190 (3)(a) is applicable to actions brought in the Federal Courts in Nevada under 42 U.S.C. §1983."

Petitioner has completely ignored the *Mason v. Schaub* case in her Brief. She stands committed to the argument that the six-year statute of limitations for written contracts is applicable to her case and yet she does not cite any authorities supportive of that position. (See Brief of Petitioner, pp. 11-12). It is quite clear that *Mason v. Schaub, supra* is dispositive of the statute of limitations question presented herein and that on that ground, the Petition for Certiorari should be refused.

Each point made by the Ninth Circuit Court of Appeals in the *Mason* decision has been amply supported by decisions from other jurisdictions. It is quite clear that reference must be made to the limitations periods prescribed by the state in which the litigation arose, since Title 42 of the Civil Rights Act contains no statute of limitations. *Spiegel v. School District Number 1, Laramie County, Wyo., supra; Green v. Ten Eyck,* 572 F.2d 1233

(8th Cir. 1978); *Prince v. Wallace,* 568 F.2d 1176 (5th Cir. 1978); *Carmicle v. Weddle, supra; Polite v. Diehl,* 507 F.2d 119 (3rd Cir. 1974); *Allah v. Commissioner of Department of Correctional Services,* 448 F. Supp. 1123 (D.C.N.Y. 1978); *Walden III, Inc. v. State of Rhode Island,* 442 F. Supp. 1168 (D.R.I. 1977), *affd.,* 576 F.2d 945 (1st Cir. 1977).

In *Nevels v. Wilson,* 423 F.2d 691 (5th Cir. 1970), the court stated:

> "The dismissal was correct as to the civil rights aspect of the complaint. There is no federal statute of limitations for claims brought under 42 U.S.C.A. §§1983 and 1985. Thus, the applicable Florida statute is to be borrowed. [citations omitted]
>
> . . . Florida Statute 95.11(5)(a), F.S.A. provides that actions for liabilities created by statute must be commenced within three years after the accrual of the cause of action. We find that statute to be controlling as to the civil rights claim . . ."

Accord, *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454 (1975); *Hill v. Trustees of Indiana University,* 537 F.2d 248 (7th Cir 1976); *Romer v. Leary,* 425 F.2d 186 (2d Cir. 1970) (action for reinstatement and back pay); *Jones v. Jones,* 410 F.2d 365 (7th Cir. 1969), *cert. denied,* 396 U.S. 1013 (1970); *Henig v. Odorioso,* 385 F.2d 491 (3rd Cir. 1967), *cert. denied,* 390 U.S. 1016 (1968), *rehearing denied,* 391 U.S. 929 (1968); *Swan v. Board of Higher Education,* 319 F.2d 56 (2d Cir. 1963); *Smith v. Cremins,* 308 F.2d 187 (9th Cir. 1962); and *Lavender-Cabellero v. Dept. of Consumer Affairs, Etc.,* 458 F. Supp 213 (S.D.N.Y. 1978).

The decisions finding that the three-year statute of limitations governing liability created by statute applicable to actions brought under 42 U.S.C. §1983 are quite instructive. The most notable of these decisions is *Smith v.*

Cremins, 308 F.2d 187 (9th Cir. 1962). In deciding which statute of limitations was applicable to actions brought under the Civil Rights Act, the Court engaged in the following discussion:

> "There are no decisions directly in point, and those most nearly analogous are inconclusive. The Court of Appeals for the Second Circuit, without discussion, has applied the New York 'liability created by statute' limitation to an action under the Civil Rights Act, and the Court of Appeals for the Seventh Circuit has indicated that it would have applied that limitation to such action, had one been available in the statutes of Illinois. The Tenth Circuit, on the other hand, has applied the Kansas statute of limitations applicable to actions 'for injury to the rights of another, not arising on contract.'
>
> In determining which period of limitation to apply to an action under a particular federal statute, the Federal Court accepts the state's interpretation of its own statutes of limitations, but determines for itself the nature of the right conferred by the Federal statute.
>
> The California courts have held that an action is based 'upon a liability created by statute', within the meaning of §338 (1), if the liability would not exist but for statute. Or, conversely, an action is not based 'upon a liability created by statute' if the right is one which would have existed at common law in the absence of statute. Though broadly stated the distinction drawn is sufficiently discriminating for the present case.
>
> §1983 of the Civil Rights Act clearly creates rights and imposes obligations different from any which would exist at common law in the absence of statute.

A given state of facts may of course give rise to a cause of action in common law tort as well as to a cause of action under §1983 but the elements of the two are not the same. The elements of an action under §1983 are (1) denial under color of state law; (2) of a right secured by the Constitution and Laws of the United States. Neither of these elements would be required to make out a cause of action in common law tort; both might be present without creating common law tort liability. As Mr. Justice Harlan recently suggested:

> '. . . a deprivation of a constitutional right is significantly different from and more serious than a violation of a state right and therefore deserves a different remedy even though the same act may constitute both a state tort and the deprivation of a constitutional right.' [Citing *Monroe v. Pape*, 365 U.S. 194 (1961)].

Practical considerations also support the selection of California's 'liability created by statute' limitation. According to Appellee's analysis, the single cause of action under the Civil Rights Act alleged in the complaint includes three distinct causes of action under state law and calls for an application of two distinct state statutes of limitations; appellant suggests still another possibility. Inconsistency and confusion would result if the single cause of action created by Congress were fragmented in accordance with analogies drawn to rights created by state law in several differing periods of limitation applicable to each state created right where applied to the single federal cause of action."

As was clearly set forth above, 42 U.S.C. §1983 creates a cause of action for violation of a federally created right

by state officers acting under color of state law. *Rose Chalet Functions Corp. v. Evans,* 264 F. Supp. 790 (D. Mass. 1967). The statute was designed to provide a federal remedy where state law was either lacking or inadequate. *McNeese v. Board of Education For Community Unit School District 187, Cahokia, Illinois,* 373 U.S. 668 (1963); See also, *Madison v. Wood,* 410 F.2d 564 (6th Cir. 1969).

Petitioner's rights did not exist at common law. She, in fact, is seeking redress against a political subdivision which historically came within the umbrella of sovereign immunity. That doctrine has been greatly modified over the years by statute and has been made specifically subservient to the protections of the Fourteenth Amendment by federal acts and state statutes.

Mrs. Haugen's position is identical to the position of the Plaintiff in *Berry v. Arthur,* 474 F. Supp. 427 (D.S.D. 1979). Berry, a university professor, alleged that he was deprived of his civil rights by university officials in respect to promotions and salary increases. After mentioning that the federal court will apply the statute of limitations which would be most applicable had the action been brought in a state court, it was held:

> "Federal courts have applied a wide range of limitation provisions to civil right actions. The lack of uniformity is due to the variety in state statute of limitation provisions, differing facts of the particular cases, and to different legal approaches in finding the most appropriate state statute.
>
> The Court in this case finds the most analogous state limitation to be S.D.C.L. 15-2-13(2). This provision provides a six-year period for 'an action upon a liability created by statute other than a penalty or forfeiture; excepting those mentioned in subdivisions

> (4) and (5) of 15-2-15.' The Plaintiff's action exists by virtue of §1983. *That statute is the sole source of his right of action. It is accordingly proper to apply the limitation fixed for actions based upon a 'liability created by statute' to actions such as the Plaintiff has brought in §1983 in South Dakota. Similar state limitation statutes have been 'repeatedly borrowed' by federal courts in civil rights cases.* [emphasis added]. *Shouse v. Pierce County,* 559 F.2d 1142 (9th Cir. 1977); *Clark v. Mann,* 562 F.2d 1104 (8th Cir. 1977); *Chambers v. Omaha Public School District,* 536 F.2d 222 (8th Cir. 1976); *Reed v. Hutto,* 486 F.2d 534 (8th Cir. 1973)."

Based upon the policies enumerated in the above cited cases and the holding in the *Mason v. Schaub* case, *supra,* the conclusion is inescapable that in Nevada, actions brought under 42 U.S.C. §1983 are governed by the three-year statute of limitations regarding liability imposed or created by statute. Since Petitioner filed her action more than three years after it accrued, she is barred from obtaining the remedy she seeks under the Civil Rights Act.

In addition to finding that Petitioner's claims under 42 U.S.C. §1983 and §1985 were time-barred by the Nevada Statute of Limitations, the United States Court of Appeals for the Ninth Circuit also found that the pendency of a notice of claim with the school district did not suspend the right to proceed in federal court under §1983 and §1985. Petitioner has still chosen to argue the claims statute question in her Brief but has failed to cite any relevant authority which would create a conflict with *Jackson v. Hayakawa,* 605 F.2d 1121 (9th Cir. 1979), where the court stated:

> "Plaintiffs cite no federal cases which would support a finding that the statute was tolled in the present case.

> The Supreme Court held that the filing of a Title VII employment discrimination charge with the Equal Employment Opportunity Commission did not toll the limitations period for the filing of a §1981 action based on the same facts. [Citation omitted] In *Bireline v. Seagondollar,* 567 F.2d 260 (4th Cir. 1977), Pet. for Cert. filed, 48 U.S.L.W. 3047 (1979) [cert. denied, 100 S. Ct. 83 (1980)], the Fourth Circuit, apparently applying federal law, refused to toll the statute of limitations in an almost identical factual situation. After being notified that she would not be rehired, a university instructor personally pursued her administrative remedies in *Bireline.* She was denied relief and then brought the §1983 action, which was found time-barred despite the administrative proceedings.
>
> If any claim supports the use of the statute of limitations, the present one does. The Plaintiffs initially slept on any rights they had until after the three-year statute of limitations had run. . . .
>
> . . . As the Supreme Court has observed:
>
> 'Although any statute of limitations is necessarily arbitrary, the length of the period allowed for instituting suit inevitably reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interest in prohibiting the prosecution of stale ones.'
>
> [Citing, *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454 (1975)]. We believe that any 'merit' to the Plaintiff's claim is sufficiently outweighed by the competing policy interest of protecting defendants from stale claims."

In a footnote, the 9th Circuit in *Jackson* referred to the reasoning in the *Bireline* case as follows:

"The Court reasoned as follows:

> 'While Plaintiff was granted an administrative hearing after May 19, 1970, and it may have been appropriate for her to have delayed filing her Complaint until after its conclusion, the pendency of the administrative reconsideration did not extinguish her legal right to proceed in court or suspend it. The fact that she was unsuccessful in the administrative reconsideration did not create a new cause of action; it only made it apparent that if she were to obtain relief, it could only come as a result of a successful lawsuit commenced within three years following May 19, 1970.'

Bireline, supra, 567 F.2d at 263."

It is quite clear that Petitioner's Notice of Claim filed in October of 1972 did not toll the running of the statute of limitations applicable to the action to be brought under 42 U.S.C. §1983. Therefore, Petitioner's argument is not well taken.

Petitioner's cause of action accrued from the date of her official termination of April 26, 1972. In *Jackson v. Alcan Sheet and Plate,* 462 F. Supp. 82 (N.D.N.Y. 1978), the court held:

> "Plaintiff has also asserted a cause of action under 42 U.S.C. §1983. It is well established that New York C.P.L.R. §214(2) governs actions brought in Federal District Court in New York under §1983. [citations omitted]. New York C.P.L.R. §214(2) establishes a three-year limitation period for a liability based on statute . . . the three year period must be measured from Plaintiff's job termination on February 21, 1975. Consequently, it is this Court's determination that

> Plaintiff's suit is equally untimely for purposes of this action under 42 U.S.C. §1983."

Accord, *Leigh v. McGuire*, 468 F. Supp. 1163 (S.D.N.Y. 1979) (dismissal of officers from police department).

Petitioner has gone on in her Brief to make several other lengthy arguments involving strained constructions of various provisions of the Nevada Revised Statutes and misconstructions of cases dealing with statutes of limitations.

Petitioner has also seen fit to describe to this Court numerous "extenuating circumstances" which allegedly support her position that she has not slept on her rights. Petitioner's charges and innuendoes are insufficient to render inoperative the statute of limitations. In *Kissinger v. Foti*, 544 F.2d 1257 (5th Cir. 1977), the court stated:

> "Plaintiff's arguments that he is a 'layman-at-law', a pauper without legal assistance, imprisoned, and has continuously sought administrative relief from various state and federal agencies afford him no defense to the absolute bar of the statute of limitations. The district court properly dismissed Plaintiff's complaint."

While Petitioner no doubt feels that her personal problems are of a far greater magnitude than those of Mr. Kissinger who claimed he had been beaten while incarcerated in a Louisiana jail, her problems do not warrant the carving out of an exception from the well established rule that an action is barred by the expiration of the time set forth in the applicable statute of limitations.

The only real issue here is whether or not the three-year statute of limitations governing liability created by statute, NRS 11.190 (3) (a), applies in Nevada to actions brought under 42 U.S.C. §§1983 and 1985. The *Mason v. Schaub, supra,* case and the *Smith v. Cremins, supra,* case

are dispositive of this question. Other circuits have also found that the applicable statute of limitations to a 42 U.S.C. §1983 action is the limitation governing liabilities created by statute. See, e.g., *Swan v. Board of Higher Education,* 319 F.2d 56 (2d Cir. 1963); *Myer v. Frank,* 550 F.2d 726 (2d Cir. 1977), *cert. denied,* 434 U.S. 830; *Cox v. Stanton,* 529 F.2d 47 (4th Cir. 1975); *McGuire v. Baker,* 421 F.2d 895 (5th Cir. 1970), *cert. denied,* 400 U.S. 820; *Garner v. Stephens,* 460 F.2d 1144 (6th Cir. 1972); *Glasscoe v. Howell,* 431 F.2d 863 (8th Cir. 1970).

CONCLUSION

For the foregoing reasons, Respondents request that the Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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By KEITH R. EDWARDS